

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry). The ministry decided that the appellant did not meet all of the requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* (the Act) for person with disabilities designation (PWD). The ministry found that the appellant met the age and duration requirements, but did not meet the following:

- the appellant has a severe physical and/or mental impairment;
- the appellant’s daily living activities are directly and significantly restricted either continuously or periodically for extended periods; and
- because of those restrictions, the appellant needs an assistive device, significant help or supervision from another person, or needs an assistance animal.

The ministry also found that the appellant is not qualified for PWD designation on alternative grounds, which includes: a person who is in palliative care; a person who received At Home Program payments through the Ministry of Children and Family Development; a person who gets or ever got Community Living BC for community living support; and a person who is considered disabled under section 42(2) of the *Canadian Pension Plan Act*.

Part D - Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the Act), section 2

Employment and Assistance for Persons with Disabilities Regulation (the Regulation), section 2

The complete legislation is found at the end of this decision in Appendix A.

Part E – Summary of Facts**Evidence at the time of Reconsideration**

The appellant's PWD application that includes:

- A Medical Report and an Assessor Report dated September 19, 2022. The reports were completed by the appellant's doctor who has known the appellant for 12 years. The doctor has seen the appellant 2-10 times prior to completing the PWD application.
The Assessor Report was based on an office interview with the appellant and file/chart information.
The PWD application also included the appellant's self-report dated August 12, 2022.
- Request for Reconsideration, dated April 5, 2023, which indicated, in part, the following:
 - My disability is permanent. Had a foot drop since 2015.
 - The questions for how much I can lift, and walk are not correct. The lowest amount is right, but the doctor won't change them.
 - Life is so difficult for me.
 - I have no help and my mom uses a walker

The information in the PWD application including the following:

Diagnoses

In the Medical Report, the doctor diagnosed the appellant with Drop foot from peroneal nerve injury (onset 2005) and Generalized anxiety (onset 2005)

Health History

The doctor said the following about the appellant's condition:

- Permanent injury to peroneal nerve – she has a drop foot that affects her ability to ambulate. She can walk, but she requires increased concentration not to trip. Always has a fall risk.
- Generalized anxiety with specific social phobia – this makes it difficult for her to interact with people. Makes day to day activity like shopping/banking/leaving her house challenging.
- Under additional information the doctor said: the appellant's functioning is impaired daily due to the foot drop and anxiety. This affects her life daily. She requires more time to complete tasks of everyday living.

Degree and Course of Impairment

The appellant's impairment is likely to last 2 or more years from the date of the PWD application, and commented: "permanent disability to foot".

Physical Impairment

In the Medical Report, the doctor said the following about the appellant:

- She can walk 2 to 4 blocks unaided on a flat surface, climb 5+ steps unaided, lift 15 to 35 lbs. and remain seated without limitation.

In the Assessor Report, the doctor said the following about the appellant:

- Can independently manage Walking indoors and Standing.
- Periodic assistance from another person is needed to manage walking outdoors (and an assistive device), climbing stairs, lifting and carrying/holding.

In the Self-Report the appellant said the following about her disability:

- Foot drop.
- Both hips have bursitis.
- Don't sleep a lot because of pain and noise.
- Clavicle was fractured in two places and sprained in two places.
- Had 4 sinusitis toothaches taking 5 or more days to have relief.
- Had eye problems, blepharitis, and marginal keratitis ulcer.
- Usually, my whole body hurts all the time, and no position is comfortable.
- Always stressed with everything. Wonder what health problem I will get next.

Mental Impairment

In the Medical Report the doctor said the following about the appellant:

- There are no difficulties with communication.
- There is significant deficits with cognitive and emotional function in the area of emotional disturbance.
- There are periodic restrictions with social functioning ("due to anxiety"), but not with personal care or financial management.

In the Assessor Report, the doctor said the following about the appellant:

- Speaking, reading, writing and hearing are satisfactory.
- There are moderate impacts to the following areas of cognitive and emotional functioning: bodily function, emotion, insight/judgement, attention/concentration, executive, motivation and motor activity.
- All other listed areas of cognitive and emotional functioning have minimal impacts.
- In the daily living activities, there are no restrictions or need for help with personal care, meals, shopping, medications or paying rent/bills.

- With social functioning, continuous support is required with the ability to develop/maintain relationships (“she avoids relationships”), no support is required with appropriate social decisions and all other listed areas of social functioning require periodic assistance.
- The appellant has very disrupted functioning with immediate and extended social networks.

In the Self-Report the appellant did not say anything about a mental impairment.

Daily Living Activities

In the Medical Report, the doctor said the following about the appellant:

- Treatments and medications that would interfere with ability to perform daily living activities have not been prescribed to the appellant.
- She is periodically restricted in performing basic housework, daily shopping, mobility inside the home, mobility outside the home, and use of transportation.
- The foot drop gets worse with fatigue.
- The restriction is always present but periodically gets worse.
- She just requires more time to do things to prevent [a] fall.

In the Assessor Report, the doctor said the following about the appellant:

- All listed tasks for all listed daily living activities are completed independently, except: social functioning (as previously indicated); under shopping, ‘going to/from stores, and carrying purchases home’; and under transportation, ‘using public transit and using transit schedules and arranging transportation’.

In the Self-Report the appellant did not say anything about her ability to perform daily living activities.

Help

In the Medical Report the doctor said that the appellant does not require any prostheses or aids for her impairment.

In the Assessor Report, the doctor said the appellant receives help from volunteers and that she needs a cane as an assistive device: “for her foot drop a cane can be useful”. Assistance is not required from an assistance animal.

In the Self-Report the appellant did not specifically state which help is needed.

Evidence At Appeal

A Notice of Appeal was submitted on May 12, 2023, which indicated that the appellant would call to give more information to the Tribunal.

A second Notice of Appeal was submitted on May 19, 2023, in which the appellant indicated that she disagrees with the ministry decision and the doctor's report about her physical capabilities.

The panel found that the second Notice of Appeal is the appellant's argument and accepted it accordingly.

Evidence At the Hearing

At the hearing, the appellant stated, in part, the following:

- She is currently on PPMB and was denied PWD.
- She always has new and different health problems.
- She does not get along with her doctor and cannot get a new one. The doctor does not listen to her.
- She has eye problems and c difficile. She also avoids eating because she has digestive issues.
- Her situation is getting worse as she needs money to pay her bills now that her mother is unwell.
- She walks to the bus because a taxi is too costly. But each step could cause a fall.
- She has no one to take her shopping. She used to order her groceries online, but her computer no longer works. She needs to replace it but does not have the money. By ordering groceries online, she will not have to worry about falling when she goes to the store.
- She has had many negative experiences and interaction with people and is treated badly. She gets anxious when she leaves the house.
- She cannot lift 35lbs like the doctor said. Due to her foot drop and clavicle problem, she can only lift 10-15lbs. She has balance problems and would likely fall if she lifted heavy weight.

The panel finds that the appellant's testimony is her argument and accepted it accordingly.

At the hearing, the ministry relied on its reconsideration decision.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the legislation.

Panel Decision**Severe Impairment**

In the reconsideration decision, the ministry was not satisfied that the information showed that the appellant has a severe physical or mental impairment. The ministry is of the opinion that to show that an impairment is severe, the information has to be weighed against the nature of the impairment and how it impacts functioning either physically or mentally. Having a diagnosis of a medical condition does not mean that the impairment is severe or that the person is qualified for PWD. The information has to show that the impairment, which is caused by a medical condition, restricts a person's ability to function on their own or effectively. The ministry has to look at the impairment and see if it impacts daily functioning. The ministry depends on the information in the PWD application and any other information that is given. The panel finds that the ministry's approach to determine severity is reasonable.

The panel also notes that the ability to work is not a consideration for PWD eligibility because the ability to work is not a requirement of section 2(2) of the Act and is not listed as a daily living activity.

Physical Impairment

The appellant said that complications from her foot drop and other health problems impact her ability to walk and lift.

The ministry said that based on the information provided in the PWD application, the appellant does not meet the legislative requirements of severe physical impairment.

In the reconsideration decision, the ministry pointed out the appellant's physical functioning as indicated in the Medical Report by the doctor (she can walk 2-4 blocks unaided, climb 2-5 steps unaided, lift 15-35 lbs and remain seated without limitation). The ministry also pointed out that in the Assessor's Report the doctor indicated that the appellant independently walks indoors and stands but requires periodic assistance with walking outdoor, climbing stairs, lifting and carrying/holding. The ministry also noted the narrative provided by the doctor.

The ministry found that the assessments provided by the doctor and the information provided in the request for reconsideration speak to a moderate rather than severe physical impairment. The ministry concluded that the assessments provided by the doctor do not establish that the appellant has a severe physical impairment.

The panel's task is to determine if the ministry's decision is reasonable. In the case of the appellant, she can function in all her physical and mobility tasks. That is, according to the doctor, she can walk 2-4 blocks unaided and climb 5+ steps lift about 15lbs and remains seated without limits. In the Assessor's Report the doctor said that the appellant needs periodic assistance with walking outdoors and has recommended a cane. The panel notes that a cane may alleviate the worries the appellant has about balance and falling. The doctor stated that the appellant needs periodic assistance with climbing stairs, lifting, and carrying/holding but did not provide an explanation as to the type of help that is needed. The information that is provided indicates a moderate level of physical functioning and therefore the legislative criteria has not been met.

The appellant explained that she cannot lift more than 15lbs and that when carrying items, she runs the risk of falling. However, the panel notes that no information has been provided about whether this can be managed to allow the appellant to function with greater ease. For example, the information does not specify if the appellant is currently using a cane or that the use of a cane has been unsuccessful in the past. Similarly, there is no information on whether the use of a cart to transport groceries, instead of carrying them, would alleviate the concern of falling when carrying weight. Additionally, the panel finds that the ability to lift 15lbs is not consistent with a severe impairment.

As a result, the panel finds that the information provided does not establish that the appellant has a severe physical impairment. As a result, the panel finds that the ministry was reasonable when it found that the appellant does not have a severe physical impairment as is required by Section 2(2)(a) of the Act.

Mental Impairment

The appellant argued that her generalized anxiety prevents her from functioning outside the home.

The ministry argued that based on the information provided in the PWD application, the appellant does not meet the legislative requirements of severe mental impairment.

In the reconsideration decision, the ministry pointed out that in the medical report the doctor said the appellant has significant deficits with emotional disturbance. The ministry also pointed out that in the assessor's report the doctor said that the appellant

experienced moderate impacts from 7 listed areas of emotional functioning (and no impacts to 7 other listed areas of emotional functioning). The ministry noted that the doctor indicated that there were restrictions to social functioning. The ministry found that the doctor did not describe the degree and duration of support/supervision that is required for interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others as requested in the PWD application to determine if it represents a significant restriction to overall level of social functioning.

The ministry stated that the doctor's assessments in the Assessor Report indicate that the appellant is independent with daily living activities that would typically be difficult for someone who experiences significant restrictions to their mental functioning, such as making decisions about personal activities, care, or finances, as well as relating to, communicating, or interacting with others effectively. For example, it is noted that the appellant is independent with dressing, grooming, bathing, toileting, feeding yourself, regulating diet, reading prices and labels, making appropriate choices while shopping, paying for purchases, meal planning, preparing food, cooking, safely storing food, banking, budgeting, paying rent and bills, filling/refilling prescriptions, taking medication as directed, safely handling and storing medication, Further, the appellant does not have difficulties with communication, and is independently able to make appropriate social decisions. The ministry finds this level of independence is not indicative of a severe mental impairment

The panel finds that the ministry's analysis regarding the appellant's ability to complete daily living activities that are typically difficult for someone who experiences significant restrictions to their mental functioning is not reasonable. The doctor specified that the appellant's generalized anxiety is specific to social phobia, and therefore, there is no reason to believe that she would have difficulties with making decisions about personal activities, care, or finances. The fact that the appellant can dress, groom, bath, feed herself , etc., independently does not measure or quantify her social phobia. The ministry's use of unrelated tasks to decide about the severity of a specified mental health issue is unreasonable.

Having said this, the panel finds the remainder of the ministry's analysis regarding mental impairment to be reasonable. The medical report indicated only one significant deficit to cognitive and emotional functioning and the assessor's report pointed out 7 areas that have a moderate impact. No explanations were provided about how these moderate impacts effect the appellant's mental functioning. Furthermore, the panel notes that in the medical report the doctor indicated that there is a significant deficit to emotional disturbance. However, in the assessor's report the same doctor indicated that there was a

moderate impact to emotion. The panel unsure why there is a difference in the reporting in the two assessments.

Given all of the information, the panel finds that the appellant does not have a severe mental impairment. As a result, the panel finds that the ministry was reasonable when it found that the appellant does not have a severe mental impairment as is required by Section 2(2)(a) of the Act.

Restrictions in the ability to perform Daily Living Activities

Section 2(2)(b)(i) of the Act requires that the minister must be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's decision is based on the evidence from prescribed professionals. The term "directly" means that there must be a connecting link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a part related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. So, in the cases where the evidence shows that a restriction happens periodically, it is appropriate for the ministry to ask for evidence about the duration and frequency of the restriction to be "satisfied" that it is for extended periods.

The appellant argued that that due to complications from her medical conditions she is unable to function and complete her daily living activities.

The ministry argued that it is not satisfied that the information in the PWD application shows that the impairment directly and significantly restricts daily living activities continuously or periodically for extended periods.

In its reconsideration decision, the ministry pointed out that the doctor said that the appellant has not been prescribed any medications or treatments that interfere with her ability to perform her daily living activities. The ministry pointed out that in the Medical Report, the doctor said that the appellant has restrictions to basic housework, daily shopping, mobility inside the home, mobility outside the home and use of transportation. The ministry noted that the doctor did not describe how much more time is required to manage basic housework, daily shopping, mobility inside and outside the home, and use of transportation to determine if it represents a significant restriction to the overall level of functioning.

The ministry pointed out that in the assessor Report, the doctor said that the appellant manages all of her daily living activities independently except for requiring periodic assistance from another person to manage going to and from stores, carrying purchases home, using public transit, and using transit schedules and arranging transportation.

The ministry acknowledges that the appellant has certain limitations and requires periodic assistance with some activities. However, the frequency and duration of these periods are not described to determine if they represent a significant restriction to the overall level of functioning. The ministry finds the assessments provided by the doctor are indicative of a moderate level of restriction and does not establish that a severe impairment significantly restricts daily living activities continuously or periodically for extended periods.

The panel finds that the ministry analysis of the evidence and findings based on the evidence to be reasonable. Though in the medical report the doctor stated that the appellant's functioning is periodically restricted in the areas of basic housework, daily shopping, mobility inside the home, mobility outside the home and use of transportation, without information regarding the frequency of the restriction it is difficult to determine if the restriction is periodic for extended periods. The doctor indicated that the "restriction is always present but periodically gets worse" and "She just requires more time to do things to prevent [a] fall". The panel is also unsure why the doctor indicated that these areas have a periodic restriction if the restriction is "always present". The doctor failed to provide any explanation or a baseline assessment of functioning and then demonstrate how or when the condition gets worse. With the information provided the panel cannot determine that the either restriction that is always present or is periodically worse is significant.

In the Assessor Report, the doctor indicated that appellant independently performs all listed tasks of all daily living activities except the tasks of going to/from stores, carrying purchases home, using public transportation and using transit schedules. The doctor did not explain why these tasks require assistance, how often or for how long. For example, why does the appellant require periodic assistance with going to/from stores. The appellant stated that she can walk to the bus but worries she may fall. She stated that she goes to the grocery store once per week via bus. She prefers to order her groceries online to avoid interacting with other people and prevent falls but is still able to get there and back. Similarly, the doctor did not explain why the appellant need assistance with using public transit and the transit schedules when the evidence demonstrates that she can use both.

The doctor also indicated that, under social functioning, 3 tasks require periodic assistance, 1 task requires continuous assistance and 1 is performed independently. However, the doctor did not indicate the frequency and duration of the assistance that is periodically required. As indicated previously, without such information, it is difficult to decide if the assistance is required periodically for extended periods.

For these reasons, the panel finds that the ministry was reasonable when it found that there is not enough information to establish that the appellant is directly and significantly restricted in the ability to complete daily living activities as required by section 2(2)(b) of the Act.

Help to perform Daily Living Activities

Section 2(2)(b)(ii) of the Act requires that, *because of direct and significant restrictions in the ability to perform daily living activities*, a person needs help to perform those activities. Help is defined as the need for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform daily living activities.

The appellant stated that she does not know how she will function without help.

Direct and significant restrictions with daily living activities are a prerequisite of the need for help. The panel previously found that the ministry was reasonable in its decision that direct and significant restrictions in the appellant's ability to perform daily living activities have not been established. Therefore, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform daily living activities as required by section 2(2)(b)(ii) of the Act.

Conclusion

The panel finds that the ministry's reconsideration decision, which found that the appellant was not eligible for PWD designation, was reasonably supported by the evidence and is a reasonable application of the legislation, and therefore confirms the decision. The appellant is not successful on appeal.

Appendix A

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

The EAPWDR provides as follows:

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following

activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is

(a) authorized under an enactment to practise the profession of

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

(i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or

(ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act, if qualifications in psychology are a condition of such employment.

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [*persons with disabilities*] of the Act:

(a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;

(b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;

(c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act*;

(d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act* to assist that family in caring for the person;

(e) a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan*

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Part G – Order

The panel decision is: (Check one) Unanimous By Majority

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Neena Keram

Signature of Chair

Date: 2023/07/21

Print Name

Corrie Campbell

Signature of Member

Date: 2023/07/27

Print Name

Charles Schellinck

Signature of Member

Date: 2023/07/21